

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DARNELL R. COOPER,

Petitioner,

v.

DAVID L. WINN, Warden,

Respondent.

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) Civil Action No. 04-40141-MLW
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RESPONDENT'S MOTION TO DISMISS

Respondent, David L. Winn, Warden, Federal Medical Center, Devens, hereby moves to dismiss this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. The reasons for the foregoing motion are set forth in the accompanying Memorandum of Law and supporting declarations.

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Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ electronic signature
MARK T. QUINLIVAN
Assistant United States Attorney
United States Attorney's Office
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
617-748-3606

Dated: September 23, 2004

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(a)(2)

Because Local Rule 7.1(a)(2) requires counsel to confer, and petitioner is proceeding pro se and is incarcerated, counsel has not contacted petitioner for his position on this motion.

/s/ electronic signature
MARK T. QUINLIVAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing Respondent's Motion to Dismiss, by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

Darnell R. Cooper
23846-050
FMC - Devens
42 Patton Drive
Ayer, MA 01432

This 23rd day of September 2004.

/s/ electronic signature
MARK T. QUINLIVAN
Assistant United States Attorney